APPEAL NO. 93189

At a contested case hearing held in Houston, Texas, on February 1, 1993, the hearing officer, Barbara G. Graham, determined that the respondent (claimant) sustained a back injury that arose out of and in the course and scope of her employment with (employer) on(date of injury), that claimant established good cause for her failure to timely notify employer of her back injury until August 18 or 19, 1992, and that claimant's back injury of (date of injury) resulted in her having disability from and after August 18, 1992, pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.03(16) (Vernon Supp. 1993) (1989 Act). Appellant (carrier) asserts in its request for review that there is insufficient evidence to support the pertinent factual findings and legal conclusions of the hearing officer and that she abused her discretion in finding good cause for claimant's untimely reporting of her injury. No response was filed by claimant.

DECISION

Finding no abuse of discretion and the evidence sufficient to support the challenged findings and conclusions, we affirm.

Claimant testified she began working for employer in September 1990 as a telephone reservation agent. The job involved claimant's sitting in a roller chair in front of a computer wearing a telephone headset, making reservations for customers. She worked four to five hour shifts and sat through these shifts except for one 15 minute break. About an hour before her shift ended on July 1, 1991, claimant leaned back in her chair to stretch. As she did so, the back of the chair, which was wobbly and would not adjust as it was supposed to, went backwards with her. Sensing she was about to fall or flip backwards, claimant jerked her body back up because she felt like she was going to fall. She immediately felt a "weird" discomfort, as well as embarrassment, but not pain. However, by the end of the day her lower back was hurting. Claimant continued to work through the end of July and had pain in her lower back when sitting, which she could relieve by getting up and "walking it out." By the end of July her back pain was severe, and she would put a pillow or a bookbag between her back and the back of her chair at work. She did not report this injury to employer because everyone complained of sore backs, it didn't get bad enough to send her to the hospital, and because she thought it was a just a muscle strain which would get better in time.

In late July and during the first weeks of August 1992, claimant's neck began to hurt her in the area behind her right ear. The pain became severe at times and would cause her to take off her headset at work for periods of time. She went to her family home over the August 15th weekend and saw her family doctor, (Dr. R), with complaint of severe pain in her ear area. Given her admitted history of migraine headaches, Dr. R felt she was having a migraine headache and gave her a pain shot. However, claimant insisted she could well differentiate between migraine headache pain, with which she was familiar, and the pain she was experiencing in her neck area. The following day claimant went twice to the emergency room and was given pain shots. When she returned to Houston, she called

employer to advise she was not coming in to work that Monday and obtained an appointment with (Dr. B), a chiropractor, for August 18th.

On August 18th, before seeing Dr. B, claimant called (Ms. RB), employer's administrative coordinator and the person designated to handle reports of work-related injuries. Claimant said she told Ms. RB about her neck pain and about the incident with her chair on (date of injury). She did not then discuss her low back pain because it was her neck pain and not her lower back pain that she was then focusing on. Further, claimant had not yet made a connection between the chair incident with the ensuing low back pain and the later onset of neck pain. It was not until she saw Dr. B that such a connection was made. Claimant stated that Ms. RB felt the incident was not covered by workers' compensation insurance because claimant had not fallen from the
chair. She said that when Ms. RB asked if she had reported the incident, claimant responded that although she was unaware of the 30-day reporting requirement (Article 8308-5.01(a)), she had not reported the injury to her employer because it had not really bothered her at the time and she thought it was going to get better. Claimant said she was examined on August 18th by Dr. B and that he questioned her closely about any history of trauma. She said it was Dr. B who connected her neck pain with her low back pain and the jerking forward of her body on (date of injury) at work. Claimant then wrote employer a letter on August 20th after seeing Dr. B. In this letter claimant recounted the circumstances of her jerking her body back up in the chair on or around (date of injury), the history of ensuing back pain when sitting, the later onset of neck and head pain, and her visit to Dr. B.

Claimant remained off work the week of August 17th and thereafter returned to work but found she could not sit for the required four to five hours because of her pain. She instead worked shifts of just one to two hours for the employer. On December 3rd, however, employer told claimant she had to start working the four hour shifts and was placed on medical leave for having exhausted the permissible number of reduced hour shifts. In addition to working the reduced hours for employer, claimant, in October 1992, began working part-time as a sales person for a lady's clothing store on one to two days per week up to a total of 10 hours per week to supplement her income. Claimant found she could do this work since it involved standing and walking. Claimant is still receiving treatment from Dr. B for her neck and low back pain once or twice a week. Claimant has not been released by Dr. B to return to her regular duties involving sitting for periods of four to five hours. She said she might be able to sit for that long but has not tried to do so, and that she still has pain after sitting for periods of up to 45 minutes and has to get up and move around or else lie down.

The carrier called a private investigator, Mr P, who testified he observed claimant for two minutes while she was working at the clothing store. He saw her ascend and descend a three step ladder and said it appeared she was taking down a display.

Carrier also called Ms. RB who testified that claimant called her on August 19th from a doctor's office complaining of a severe headache and mentioned having sat in a chair on (date of injury) that was broken and not adjustable, and that the doctor was beginning to relate her sitting on the broken chair to her headache. She denied that during this conversation claimant mentioned the incident about leaning back in the chair and jerking forward or mentioned her neck pain. Ms. RB also stated that claimant's attendance record showed her first absence after (date of injury) as August 17th for two days. Ms. RB also testified that when claimant told her the doctor was relating her pain to her work, Ms. RB told her to get a letter and employer would turn it in as an occupational injury.

According to Dr. B's records, claimant was first seen by him on August 18th. She provided a history of sitting in a broken chair at work that injured her low back and tailbone. She also related sitting in a broken chair, tilting her head to the right to hold the phone, and her neck becoming painful. On August 18th, claimant could barely move her neck and also complained of headache. Dr. B diagnosed cervical sprain, cervical strain, migraine headache, cervicocranial syndrome, lumbar sprain strain, and subluxation complex-thoracic and lumbar spine. He recommended conservative care in the form of physiotherapy and chiropractic adjustment.

Upon referral by Dr. B, claimant was examined on August 28th by (Dr. F), a neurologist. She gave a history of sitting in a roller-type chair with a flexible back and the chair back suddenly falling back and causing her to snap backwards and then forwards. She reported that the pain began in her tailbone area and later became worse and radiated up to her neck. Dr. F's impression was that claimant may have cervical strain. He believed her headaches were cervical in origin and that she had mechanical low back pain.

In a letter of December 8, 1992, Dr. B explained that when claimant was sitting in the chair with the broken back, she snapped her spine into hyperextension and then, while pulling herself up, snapped back into hyperflexion. In his opinion claimant injured both her cervical and lumbar spine in that accident, noticed immediate pain in her lumbar spine but developed cervical pain later. Carrier offered a report from (Dr. FN) who examined claimant in early December, opined that she had reached maximum medical improvement with no impairment, and felt she had been overtreated by Dr. B.

We agree with the hearing officer that claimant met her burden of proof on the three disputed issues. Though claimant could establish an injury through her testimony alone, her testimony was corroborated, in part, by medical records of Drs. B and F. Her testimony was unrefuted that she did experience the falling back and snapping forward incident in the roller chair at work on or about (date of injury) which resulted, according to Dr. B, in her spine being hyperextended and hyperflexed and with the later onset of neck pain. As for her good cause for not reporting her injury within 30 days of the occident, the law is well settled that an injured employee's "trivialization" of the injury may amount to good cause.

See Texas Workers' Compensation Commission Appeal No. 93155, decided April 14, 1993. That is what the claimant testified to and the hearing officer obviously credited such testimony, along with testimony that claimant was unaware that her neck and head pain stemmed from the accident until after being so advised by Dr. B. Similarly, claimant's testimony supports the determination that she had disability as defined in Article 8308-1.03(16) from and after August 18th as a result of her injury in that she could no longer sit for more than approximately two hours as opposed to the four to five hours required by her employment. We noted in Texas Workers' Compensation Commission Appeal No. 92064, decided April 3, 1992, that it is possible for a claimant to return to work and still have disability if the lower wages are caused by the compensable injury. Disability is not the same thing as impairment.

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge